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TOWARDS A NEW ALBERTA LAND TITLES ACT

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ALBERTA LAW REFORM INSTITUTE

The Alberta Law Reform Institute was established on January 1, 1968, by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding of the Institute's operations is provided by the Government of Alberta, the University of Alberta, and the Alberta Law Foundation.

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PREFACE AND INVITATION TO COMMENT

This Report for Discussion accompanies the Joint Land Titles Committee's Report *Renovating the Foundations: Proposals for a Model Land Recording and Registration Act*. While it includes some discussion which the Institute considers to be of special interest and use to Albertans, it is, in essence, a solicitation of comment upon the Joint Committee's Model Act and upon the desirability of the enactment of Alberta legislation based upon the Model Act. The Institute will review the Model Act in the light of the comments which it receives and the consultation in which it will engage, and will decide what recommendations it should make to the Government of Alberta.

It is just as important for interested persons to advise the Institute that they approve the proposed Model Act in whole or in part as it is for them to advise the Institute of objections and suggestions for amendment. The Board of Directors of the Institute appreciates all assistance which it receives and will consider all comments before making a final report and recommendations.

Comments should be in the Institute's hands by December 31, 1990. Comments in writing are preferred.

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Statute	Abbreviated Reference
The Land Titles Act, R.S.A. 1980, Chapter L-5, as amended.	LTA
Draft Statute	
Model Land Recording and Registration Act, prepared by the Joint Committee on Land Titles.	Model Act, or MA
Books and Reports	
Torrens' Elusive Title, Thomas W. Mapp, Alberta Law Review Book Series, 1978	Mapp
Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada, Joint Land Titles Committee, 1990	Report, or Joint Committee's report

REPORT FOR DISCUSSION

1. Purpose of this report for discussion

This Report for Discussion accompanies the report of the Joint Land Titles Committee entitled *Renovating the Foundation: Proposals for a Model Land Recording and Registration Act for the Provinces and Territories of Canada*. The core of the Joint Committee's report is a Model Land Recording and Registration Act.

The purpose of this Report for Discussion is:

(a) to state the Institute's tentative conclusion that Alberta should enact a statute along the general lines of the Model Land Recording and Registration Act in substitution for the Land Titles Act, and

(b) to invite comment on the Model Act.

We will review our tentative conclusion in light of the comment which we receive and in light of the consultation with interested parties in which we propose to engage. Following that review and a reconsideration of the issues, we will issue a final report and recommendations reflecting the results of the review.

In this Report for Discussion we discuss some existing Alberta law and make some comparisons between it and the Model Act. We do so only to illuminate some selected subjects concerning which we think that Alberta-oriented discussion and comparisons will be especially helpful to readers. This Report for Discussion does not supersede the discussion in the Joint Committee's report, nor does it purport to discuss every major area of that report or of the Model Act.[1]

2. The Institute's land titles project and the Joint Committee

The Institute has had a long-standing interest in the Land Titles Act. In 1978, it arranged for the publication by the Alberta Law Review of the monograph entitled *Torrens'*

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[1] For example, this Report for Discussion makes no reference to the form of the register, the compensation system, overriding interests, or the problem of conflicting registers.

Elusive Title[2] which was prepared by Professor Thomas Mapp as counsel for the Institute and which represents the fruits of his extensive research and analysis in the field of interest recording and title registration. By 1987, Professor Mapp had found time to draft an interest recording and title registration statute.

In that year, 1987, the Institute discussed this project with representatives of other provinces and the two territories. Those representatives thought that a model statute suitable for general use in Canada should be prepared, and the Joint Land Titles Committee was accordingly struck to prepare it. The Joint Committee includes representatives of the governments of all the provinces and territories of Canada except Quebec and Newfoundland (though the representation of the Maritime Provinces has been through the Council of Maritime Premiers). It also includes representatives of the law reform agencies of British Columbia, Alberta, Saskatchewan and Manitoba.

The Joint Committee started its work with Professor Mapp's draft statute. It met at Edmonton in November 1988, at Vancouver in March 1989, and at Toronto in October 1989, to discuss the issues and to consider further drafts which were prepared to give effect to the Joint Committee's evolving views. The Joint Committee's work has now culminated in the report mentioned above and in the preparation of the Model Land Recording and Registration Act.

The Institute has had the carriage of the joint project. The drafting of the statute was primarily done by Professor Mapp, and the report and annotations were drafted by W.H. Hurlburt. However, the Model Act is a collegial product and the issues have all been discussed and decided by the Joint Committee.

The Joint Committee has done its work and produced its Model Act. The Institute proposes to encourage, and to participate in, a broad discussion of the Model Act in Alberta, in the hope that the Model Act will be found a useful foundation for provincial legislation.

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2 Published as Volume 1 of the Alberta Law Review Book Series.

3. Interest recording and title registration in Alberta

(a) Reasons for a revised interest recording and title registration statute

The Alberta interest recording and title registration system has, on the whole, served the province well. It has proved flexible and capable of evolving to meet changing circumstances. However, its formal legal foundation, the Land Titles Act, still reflects discarded notions from earlier times, and the successful evolution of the system has been accomplished by judicial, professional and administrative creativity, which has been hampered rather than facilitated by the statute. A new statement of the law, rationalized and brought into line with the evolving Alberta system, is needed. Specific problems have been dealt with from time to time by specific amendments to the Land Titles Act, but the statute as a whole is not a satisfactory foundation for a modern system.

(b) Evolution of interest recording and title registration legislation in Alberta

(i) Historical origins of the Alberta Land Titles Act

The Alberta progenitor of the present Land Titles Act was the Land Titles Act of 1906,[3] which was based upon the federal Land Titles Act of 1894,[4] which, in turn was based upon the Territories Real Property Act of 1886.[5] The enactment of this 1886 federal statute and the Manitoba Real Property Act of 1885[6] followed upon agitation for the introduction of legislation based upon the Australian Torrens model and both were based upon that model.

The Alberta statute is similar to title registration statutes of Manitoba and Saskatchewan and to the federal Land Titles Act, which applies in the two territories. The Ontario title registration statute[7] is based upon an English model, and the British Columbia statute,[8] though itis characterized as a Torrens statute, has developed somewhat differently from the Australian Torrens model. For Alberta purposes, it is not

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3 S.A. 1906 c. 24.

4 SC 1894 c. 28.

5 SC 1886 c. 26.

6 SM 1885 c. 28.

7 The Land Titles Act, RSO 1980 c. 230.

8 The Land Titles Act, RSBC 1979 c. 219.

necessary to examine the differences among those statutes, or the differences between them and the present English model: a consideration of the Alberta system of land titles, including its Torrens system origins and its evolution into the very different system which is in force in Alberta today, will be sufficient for the reader's purposes.

(ii) Torrens principles[9]

Under the common law, a purchaser of an interest in land acquired only what the seller could convey. A prudent purchaser therefore had to check not only the conveyance provided by the seller but also the documents which constituted the seller's chain of title, which could be numerous and which could contain hidden flaws. There was no assurance that the seller or a prior owner had not granted interests in the land which were not disclosed. The process was expensive and time-consuming and certainty of ownership was difficult, if not impossible, to achieve.[10] Title registration, of which the Torrens system is an example, was intended to avoid such difficulties.

The essential feature of a pure Torrens system is a state-operated register which is the source of all rights in land. The register says who owns each parcel of land and what rights in the land are held by others. The register's statement that O owns Blackacre is a statement of the law. Upon every transfer of the fee simple absolute, title is surrendered to the Crown and regranted to the transferee.[11] The only concession to unregistered interests is that a caveat, caution or notice in the register will preclude subsequent conflicting registrations for a specified period of time or until the caveator has been given notice to come forward and prove the validity of the interest claimed.

Sir Robert Torrens, the originator of the Torrens system wanted to enable landowners to do their own conveyancing. The original Torrens statutes therefore prescribed forms for use for land transactions. This limited the number of kinds of transactions the system could effectively cope with.

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9 For a full discussion of a Torrens system, see Mapp, Chapter 4, at 59-71.

10 For a full discussion of the common law conveyancing system and the difficulties created by it, see Mapp, Chpater 2, at 7-42.

11 Torrens, *South Australian System of Conveyancing by Registration of Title*, 34.

(iii) Departures from Torrens principles in Alberta

In Alberta, a register composed of certificates of title is the centrepiece of the title registration system. A statement in the register that O is the owner of Blackacre is a statement of law,[12] and a statement that A holds an interest in Blackacre as conferred by a registered instrument is also a statement of law. This is all in accordance with Torrens system theory. However, the Alberta system of land titles (as well as the other Canadian systems) has evolved in ways not contemplated by Sir Robert Torrens and is very different from the system which he contemplated.

The most important departures from the original Torrens system are:

(1) Alberta law recognizes unregistered interests. An unregistered conveyance immediately confers an interest. The interest so conveyed is vulnerable to the registration or caveating of conflicting interests, but in the meantime it is fully effective.

(2) Alberta law provides a system of protection of the priority of unregistered interests through the caveat. The caveat is used as a permanent form of protection for unregistered interests. It is not a mere blocking device to give a claimant time to perfect an interest, as it is under a pure Torrens system.

(3) Although Alberta law, through regulations under the Land Titles Act, prescribes forms for registered documents, conveyancers can add provisions at will (though they may encounter difficulties if the added provisions change the legal nature of the interest conveyed).

These departures have been made because the original Torrens system theory was too rigid and did not meet felt needs. A system of priorities for all interests has been developed because business efficiency and the interests of landowners require it and because it is not inconsistent with facility of transfer. Flexibility of registrable forms is required for purposes of business efficiency. Unregistered interests are recognized because a draconian and often unjust refusal to recognize them is not required by considerations of business efficiency.

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12 Alberta Land Titles Act s. 64.

4. Some comparisons between the existing law and the Model Act

(a) Recognition of unregistered interests[13]

As noted above, it is not necessary, for the purposes of interest recording and title registration, to invalidate unrecorded and unregistered interests. All that is necessary is to enable persons who acquire interests in land to avoid being subjected to unrecorded and unregistered interests. The existing law recognizes this, but it does so in the teeth of the Land Titles Act.

The following table shows the legal situation with respect to unrecorded and unregistered interests under the Land Titles Act, construed literally, and under the present law, and the situation as it would be under the Model Act:

Land Titles Act as written (Torrens theory)	**Land Titles Act as interpreted**	**Model Act**
LTA s.56		MA 4.5(1)
A conveyance passes no interest until registered.	An interest is effective from the time of the transaction, and interests will be enforced in accordance with common law priorities. (This is subject to effect of recording and registration of conflicting interests).	An interest is effective from the time of the transaction, and interests will be enforced in accordance with common law priorities. (This is subject to effect of recording and registration of conflicting interests).

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[13] See Mapp, at 143-46; Report at 13.

(b) Effect of caveating/interest recording[14]

The Alberta caveat system is a system for protecting the relative priorities of interests in land. The interest recording system described at pages 13 to 18 of the Joint Committee's report and provided for in Part 4 of the Model Act which, with annotations, appears at pages 67 to 85 of the Joint Committee's report, is essentially the same as the caveat system, but instead of filing a caveat to protect the interest, the claimant will "record" the interest.

A caveat under the original Torrens system was (and under some current title registration systems is) a temporary device to freeze the title situation on the register until a claimant of an interest in land could take legal steps to protect the claim. Either a short time limit is imposed within which the caveator must commence legal proceedings on the interest, or the Registrar is forbidden to make any entries while the caveat is in force, or both: either device prevents a caveat from giving more than short-term protection.

The situation is very different in Alberta.[15] Section 145 of the Land Titles Act provides that "registration by way of caveat...has the same effect as to priority as the registration of any instrument under this Act". While the interpretation of this section is not beyond dispute,[16] it is accepted law that the registration of a caveat has two effects. First, it preserves the priority of the caveated interest over subsequent interests. Second, it confers upon the caveated interest priority over prior interests which have not been registered or caveated, but only if the caveated interest was obtained for value and without fraud.[17]

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14 See Mapp at 147-49; Report at 13-18.

15 Some other Canadian jurisdictions have similar systems of conferring and protecting priorities of interests which are not registered.

16 See, for example, the dissenting judgment of Stuart J. in *Re Royal Bank of Canada and La Banque d'Hochelaga* (1914) 7 W.W.R. 817 (App. Div.), in which he held that, under the predecessor of s. 145, a caveat was intended "to keep things exactly as they are and no more", i.e., the registration of a caveat, in his view, did not interfere with the existing priority of another unregistered and uncaveated interest.

17 The decisions that are generally taken to have established these propositions are *Stephens* v. *Bannan and Gray* (1913) 5 W.W.R. 201 (Alta. SC en Banc) and the *Royal Bank* case mentioned in the preceding footnote. In the *Stephens* case, the interest prior in time was caveated first. In the *Royal Bank* case, the

(continued...)

Section 135 of the Land Titles Act now provides simply that "so long as a caveat remains in force an instrument registered subsequent to the caveat...is subject to the claim of the caveator".[18] Given the existence of section 145, this is tautological. The existence of section 135 can be explained, however, on historical grounds. Until 1982, section 135 and its predecessors provided that "so long as a caveat remains in force, the Registrar shall not register an instrument purporting to affect the land...unless the instrument is expressed to be subject to the claim of the caveator". The section was universally ignored in the interests of efficient conveyancing, and in 1981, the present section 135 was substituted for it, so that the statute would in this respect conform to the practice.

There being no time limit on the effectiveness of a caveat, these provisions, and the practises of conveyancers and Registrars, have poured into the old bottle of the Torrens short-term blocking caveat the new wine of a comprehensive and long-term system of protection of priorities of unregistered interests.

The registration of a caveat does not confer an interest upon the caveator, nor does the discharge of a caveat of itself terminate the caveator's interest. Further, there is good authority for the proposition that if a caveat is discharged but the underlying interest is not extinguished, the underlying interest maintains its priority over any interest which was registered or caveated during the currency of the caveat.[19]

While the point has not arisen in the reported cases, the interest of a purchaser who, during the course of the purchase transaction, receives and registers a forged discharge of a prior interest, may well be subject to the caveated interest despite the removal of the caveat from the register. If the caveated interest would have been entitled to priority at common law, the purchaser may not even have a claim against the assurance fund for compensation for the resulting loss.

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[17](...continued)
caveated interest of La Banque d'Hochelaga took priority over both the prior unregistered and uncaveated equitable mortgage in favour of the Royal Bank and the subsequent registered mortgage in favour of the Royal Bank.

[18] In terms, s. 135 does not subject an interest caveated later to an interest caveated earlier, but s. 145 is sufficient for that purpose.

[19] See *Passburg Petroleums Ltd.* v. *Landstrom Developments Ltd.* [1984] 4 W.W.R. 14 (Alta. CA); *Bensette* v. *Reece* [1973] 2 W.W.R. 497 (Sask. CA).

Under section 4.5(2) of the Model Act, the "recording" of an interest will confirm the priority of a prior interest, and will confer priority upon a subsequent interest which has been obtained for value without fraud. It will not confer an interest. The cancellation of a recording, under section 4.7(2), will not of itself terminate the interest, and under section 4.7(3), it will not affect the priority of enforcement rights which have accrued before the cancellation. It is these provisions which make the proposed recording system essentially the same as the caveat system. Section 7.1(2) of the Model Act would, however, go on to provide compensation for a purchaser who has relied on a forged request for cancellation of a recording during the course of the purchase.

If caveating an interest protects the existing priority of the caveated interest over existing and future subsequent interests, and if it also confers priority over any existing unregistered and unrecorded prior interests, it acts very much like registering an instrument under a deed registration system, which is one form of an interest recording system. Indeed, that is the case. The Land Titles Act thus provides an existing interest recording system as well as a title registration system. It does not, however, do so in a clear and comprehensible way. Part 4 of the Model Act would substitute a clearer and more comprehensible interest recording system which in essence is the same as the present caveating system.

A comparison of some of the provisions of the Land Titles Act and the Model Act follows. These relate to the essential nature of interest recording, and the reader is referred to Part 4 of the Model Act for other provisions.

Land Titles Act	**Model Act**
LTA s. 130	MA s. 4.1
A person claiming to be interested in land may cause a caveat to be filed.	Any interest recognized under law (see MA s. 1(e) for the definition of interest) may be recorded.
LTA s. 130 and 131(1)	MA s. 4.2(1)
A caveat must state the nature of the interest claimed and the grounds on which the claim in founded and must be in prescribed form.	An interest may be recorded by means of a document in prescribed form which incorporates the document on which the interest is based or a copy thereof or which summarizes the transaction on which it is based.

	MA s. 4.5(4)
	The recording of a prior interest by summary is effective only as to the rights expressly described in the recorded document and only to the extent of the description of each right.
LTA s. 135	MA s. 4.5(2)
An instrument registered subsequent to a caveat is subject to the claim of the caveator.	A subsequent interest shall be enforced with priority over a prior interest if the subsequent interest was
The discharge of a caveat does not affect the priority of the caveated interest over subsequent interests which were caveated or registered before the discharge of the caveat.	(a) obtained for value,
	(b) obtained without fraud, and
	(c) obtained and recorded at times when the prior interest was not recorded.
LTA s. 144	
Registration by way of caveat has the same effect as to priority as the registration of an instrument.	
General statement	General statement
The registration of a caveat does not create or confer an interest (see LTA s. 144), and the discharge of a caveat does not terminate the recorded interest or affect priorities established before the discharge. Caveating deals and deals only with relative priorities of interests.	The recording of an interest will not create or confer an interest (see MA s. 4.5(2)), and the cancellation of a recording will not terminate the recorded interest (see MA s. 4.7(2) or affect priorities established before the discharge. Recording deals and deals only with relative priorities of interests.

(c) Effect of registration[20]

Under both the Alberta Land Titles Act and the Model Act, registration both confers or confirms ownership and confers or confirms priority. The Alberta Land Titles Act as

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[20] See Mapp, Chapter 5, *Conferring Ownership by Registration* and Chapter 6, *Defeasibility of Ownership Conferred by Registration*; Report at 18-26.

written embodies original Torrens theories, but, as the table below shows, it has been interpreted differently. The scheme of the Model Act is much the same as the scheme of the present law as it has evolved through judicial interpretations of the Land Titles Act. The following table compares the Land Titles Act construed literally, with the law as it has evolved and with the legal situation proposed by the Model Act.

Land Titles Act as written (Torrens theory)	**Land Titles Act as interpreted (present law)**	**Model Act**
LTA s. 57		MA s. 5.3(1)
So soon as registered every instrument becomes operative according to tenor and intent and creates, etc., the estate or interest mentioned in the instrument.	Registered owner is legal owner of the registered interest. However, if the general law does not recognize the interest conferred by the instrument as one of the registerable interests, or if the general law does not recognize the registered owner as having legal capacity to own the interest, the registration will not be effective.	Registered owner is legal owner of the registered interest if the interest is recognized under law and qualified for registration under s. 5.1 and if the registered owner has legal capacity to own the interest.
Termination of registration	Termination of registration	Termination of registration
Divests interest.	Divests interest.	Divests interest: see MA s. 5.4(2)
Registrable interests	Registrable interests	Registrable interests
Various sections of the LTA provide for registration of a limited list of instruments other than caveats. These include such things as mortgages and leases.	Present law is in accordance with Act.	MA s. 5.1 provides a list of registrable interests somewhat more extensive than the list of interests registrable under the Land Titles Act.

LTA s. 16(5)		MA s. 5.3(4)
Serial number assigned to instrument determines priority.	Present law is in accordance with Act.	Registration records an interest and thus confers priority (though if the interest was previously recorded, it will upon registration retain the priority conferred by the earlier recording).
LTA s. 64		**MA s. 5.3-5.6**
Owner under certificate of title holds absolutely free of all other encumbrances, etc., except (a) encumbrances, etc., entered in register, (b) in case of fraud, (c) prior certificate of title.	The owner holds subject to the interests mentioned in section 64 as listed in left-hand column, and also to the following additional interests: (a) interests binding on owner, (b) overriding interests under LTA s. 65, (c) if owner is a volunteer, interests binding upon the donor, (d) if owner was registered through error, the interest of the displaced owner in recovering the interest.	A registered interest upon registration is subject (see MA s. 5.3(6) to (a) transactions which bind the registered owner, (b) conflicting interests entitled to priority, and (c) overriding interests. Situations in which registrations are subject to being revised are set out in MA s. 5.4, 5.5 and 5.6 and include those under present law. However, MA s. 5.3(5) confers upon a registered volunteer or donee the same protection as the Model Act confers on a purchaser. MA s. 5.6 (conflicting registers) replaces the prior certificate of title exception.

(d) Volunteers[21]

The following table compares the provisions of the Land Titles Act dealing with volunteers with the counterpart provisions of the Model Act.

Land Titles Act (as interpreted)	Model Act
Registered interests	Registered interests
LTA s. 56, 57, 64 and 66 do not in terms exclude volunteers from their protection. However, some provisions of the LTA do refer to the giving of value: (a) LTA s. 160 protects only registered owners "bona fide and for value", (b) LTA s. 173(1) protects a person deriving title through an owner who has obtained title by fraud only if the person is a transferee bona fide for value, (c) s. 177(4) confers a power on the Registrar to correct the register "so far as practicable without prejudicing rights conferred for value", (d) s. 195 provides that a person taking a conveyance is not bound "to see to the application of the purchase money". The judicial interpretation is that LTA registration protects only owners who have given value: *Kaup v. Kaup* [1962] SCR 170.	MA s. 5.3(1) declares that the registered owner of an interest is the owner of the interest. MA s. 5.3(5) provides that "a registered interest has been obtained for value for the purposes of section 4.5". The effect is that a registered interest will have priority from the time of its registration (or prior recording) even if no value was actually given. This is a change of policy from the existing law. See the discussion of this subject at pages 36-37 of the Joint Committee's report.
Caveated interests	Recorded interests
LTA s. 145 provides that registration by way of a caveat has the same effect as to priority as the registration of an instrument. Given the interpretation of the	MA s. 4.5(2)(b)(i) confers priority upon a subsequent recorded interest over a prior unregistered and unrecorded interest only if value has been given for the

[21] See Mapp, at 56 and 121-29; Report at 36-7.

provisions about registration of instruments, it seems likely that the registration of a caveat by a volunteer would be held not to give priority over a prior unrecorded and unregistered conflicting interest held by a purchaser for value.

subsequent interest. Since MA s. 4.5(1) declares that interests are to be enforced with priority according to law, subject to MA s. 4.5(2), and since MA s. 4.5(2) does not confer priority upon a volunteer, the recording of a subsequent interest for which no value has been given will not confer priority over a prior interest.

(e) Fraud[22]

The subject of fraud is discussed at pages 34-36 of the Joint Committee's report and in the annotations to section 1.2 of the Model Act which appear at page 50. The Model Act adopts the LTA policy that an owner who obtains registration by fraud is not entitled to the protection of the statute, and it adopts the LTA policy of restricting the kinds of fraud which will have this effect as between a person who has achieved registration and the holder of a prior unregistered and unrecorded conflicting interest. It attempts, by the partial definition in section 1.2, to give greater precision to the notion of fraud in that kind of case.

The following table compares the provisions of the Land Titles Act relating to fraud with the counterpart provisions of the Model Act.

Land Titles Act	Model Act
LTA s. 145 would probably be interpreted as not conferring priority upon a caveated interest if the interest or the priority of recording was obtained by fraud, on the grounds that LTA s. 145 provides that registration by way of caveat confers the same priority as registration of an instrument, and registration of an instrument obtained by the grantee's fraud is an exception from indefeasibility.	MA s. 4.5(2)(b)(ii) confers priority upon a subsequent recorded interest over a prior unregistered and unrecorded interest only if the subsequent interest was obtained without fraud. Since MA s. 4.5(1) declares that interests are to be enforced with priority according to law, subject so MA s. 4.5(2), and since MA s. 4.5(2) will not apply in favour of a person who obtains an interest by fraud, the recording of a subsequent interest for which no value has been given will not confer priority over a prior interest.

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22 See Mapp, at 110-21; Report at 34-6.

Registration does not protect a registered owner who obtains registration by his or her fraud (See MA ss. 64, 66, 160 and 173(1)(d)).

The LTA does not say anything about fraud as between immediate parties, so that the general law would presumably apply.

LTA s. 195 provides that

(a) a person taking a disposition from a registered owner of land is not affected by notice, direct, implied or constructive, of any trust or unregistered interest, and

(b) the knowledge that any trust or unregistered interest in existence shall not of itself be imputed as fraud.

The LTA does not say what it is that, in addition to knowledge, will make the person's conduct fraudulent. The effect of the judicial authorities cannot usefully be summarized here.

MA s. 5.4(1)(c) provides that registrations may be revised when a registration was obtained through the fraud of the registered owner.

The MA does not say anything about fraud as between immediate parties, so that the general law would presumably apply.

MA s. 1.2 provides that

(a) the doctrine of constructive notice is abolished for the purpose of determining whether conduct is fraudulent under the MA,

(b) a person dealing with an owner is not affected by actual knowledge of an interest which is unrecorded and unregistered,

(c) the person may assume without inquiry that the transaction is authorized by the owner of an unrecorded and unregistered interest and will not prejudice that interest, and has no duty to assure the proper application of assets paid or delivered to the owner, but

(d) the person obtains the interest through fraud if he of she had actual knowledge that the transaction was not authorized by the owner of the interest and will prejudice the interest.

(f) Unauthorized transactions[23]

The subject of registrations which are not based on valid transactions is discussed at pages 24-26 of the Joint Committee's report, and in section 5.6 of the Model Act and the annotations to it, which appear at pages 98-101. The paradigm example is a

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23 See Mapp, at 103-9 and 129-134; Report at 24-6.

registration based upon a forged transfer, but there can be other cases, such as a case of *non est factum* or error in transcription by the land registration office.

The following table compares the situation under the Land Titles Act with that under the Model Act.

Land Title Act	Model Act
The LTA does not deal specifically with the case of a registration based upon an unauthorized transaction. The language of LTA ss. 64, 66, 160 and 173(1) has to be interpreted with respect to circumstances which it does not clearly cover. *Frazer v. Walker* [1967] AC 569 (PC) held that a bona fide purchaser for value who obtains registration of a forged transfer is the legal owner of the registered interest. It seems likely that this is the law of Alberta, though it has not been authoritatively so held (*Frazer v. Walker* being decided under New Zealand law).	MA s. 5.6 provides that if a registration was not authorized by a valid transaction but was requested by the registered owner in the belief that it was authorized by a valid transaction and without knowledge of the facts which rendered the transaction invalid, either the registered owner or the owner who has been deprived or subordinated by the registration may bring an action to resolve the matter. In the action, the deprived or subordinated owner will be entitled to have registrations revised to nullify the effects of the unauthorized registration, unless the Court, having considered specified circumstances and any others that are relevant, decides that it is just and equitable to confirm the unauthorized registration. The party who is unsuccessful with respect to the registration will receive compensation under the Model Act.

5. Transitional provisions

The Model Act does not include transitional provisions dealing with the effect on existing rights of any changes in interest recording and title registration law. The protection which the Model Act would give to volunteers is an example. Transitional provisions will be required.

The Land Titles Act includes much substantive law. The Model Act includes very little, because it focuses on interest recording and title registration law and excludes

distracting irrelevancies. As it is not part of this project to change the substantive law, the substantive law not picked up by the Model Act will either have to be put into a substantive real property law statute or included in the Model Act as a separate substantive law part. Legislation dealing with it will be required.

The Land Titles Act includes much administrative procedure. The Model Act provides for Registrars and land registration offices in broad outline, but relegates all other administrative materials to regulations, where they properly belong. Regulations will be required.

If a statute along the lines of the Model Act is to be enacted, it is obvious that transitional provisions will require a good deal of work. They will, however, be manageable. The Institute will make proposals at the appropriate time and arrange consultation on them.